

REMARKS

1. Entry of the foregoing, and further and favorable consideration of the subject application are respectfully requested. By the present amendment, claim 5 has been amended to remove reference to full-length functional derivatives of Breast Cancer Resistance Protein. Withdrawn claims 13-15 have been amended to remove reference to inhibition of the function of Breast Cancer Resistance Protein. Claims 12, 18, and 21-39 have been canceled without prejudice to or disclaimer of the subject matter contained therein. No new matter has been added.

2. Applicants gratefully acknowledge the courtesy shown by the Examiner to their undersigned representative in several telephone conversations held during November and December, 2004. In those conversations, amendments to claim 5 that would place the claim in condition for allowance were discussed. It was agreed that amending claim 5 as shown above would result in withdrawal of the rejections of record as they were applied to claims 5-7.

3. Applicants respectfully request rejoinder of method claims 13-15 with pending claims 5-7. According to MPEP 821.04, "if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." *MPEP 800-63*. As currently amended, withdrawn process claims 13-15 depend from claims 5-7, and include all the limitations thereof. As claims 5-7 are now believed to be in allowable form, rejoinder of process claims 13-15 would appear to be in order.

Claim Rejections – 35 USC §112

4. Claims 5-7 are rejected under 35 USC 112, ¶1, as purportedly broader in scope than the enabling disclosure provided by the specification. This rejection is respectfully traversed.

5. The Examiner argues, at p. 3 of the Official Action, that because claims 5-7 recite “derivatives” of BCRP, they are “drawn to a whole universe of molecules that would be expected to have neither structural nor functional identity (other than their ability to serve as antigens) to the claimed invention. Applicants respectfully submit that, as the rejected claims are directed to antibodies, the ability of the recited proteins to function as antigens is the critical property of those proteins. Nevertheless, without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5-7 have been amended to delete reference to BCRP, and to derivatives thereof. Accordingly, withdrawal of this rejection is respectfully requested.

6. Claims 5-7 are rejected under 35 USC 112, ¶1 as purportedly not supported by an adequate written description in the present specification. This rejection is respectfully traversed.

7. The Examiner argues, at p. 4 of the Official Action, that claims 5-7 “are drawn to an antibody that binds to a functional derivative with an unknown structure, thus the instant claims are drawn to an antibody with an unknown structure because of its binding affinity to a protein of unknown structure.” Without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5-7

have been amended to delete reference to BCRP, and to derivatives thereof.

Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejections – 35 USC §102

8. Claims 5-6 are rejected under 35 USC 102(b) as purportedly anticipated by Filipits et al. and Dexter et al. This rejection is respectfully traversed.

9. The Examiner argues, at p. 4 of the Official Action, that “the breast cancer resistance proteins of Filipits et al and Dexter et al. clearly are functional derivatives of the instantly claimed SEQ ID NO: 1.” Without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5-6 have been amended to delete reference to BCRP, and to derivatives thereof. Accordingly, withdrawal of this rejection is respectfully requested.

10. Claims 5 and 7 are rejected under 35 USC 102(b) as purportedly anticipated by Filipits et al. and Dexter et al. This rejection is respectfully traversed.

11. The Examiner argues, at p. 4 of the Official Action, that “the breast cancer resistance proteins of Filipits et al and Dexter et al. clearly are functional derivatives of the instantly claimed SEQ ID NO: 1.” Without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5 and 7 have been amended to delete reference to BCRP, and to derivatives thereof. Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejections – 35 USC §103

12. Claims 5 and 7 are rejected under 35 USC 103 as purportedly obvious over Filipits et al. and Dexter et al. in view of Harlow et al. This rejection is respectfully traversed.

13. The Examiner argues, at p. 4 of the Official Action, that “the breast cancer resistance proteins of Filipits et al and Dexter et al. clearly are functional derivatives of the instantly claimed SEQ ID NO: 1.” Without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5 and 7 have been amended to delete reference to BCRP, and to derivatives thereof. Accordingly, withdrawal of this rejection is respectfully requested.

Claim Rejections – 35 USC 112

14. Claims 5-7 are rejected under 35 USC 112, ¶1, as purportedly unsupported by an adequate written description in the specification. This rejection is respectfully traversed.

15. The Examiner argues, at p. 6 of the Official Action, that the present specification does not support the limitation of “full length functional derivative” in claim 5. Applicants maintain that this limitation is fully supported in the present specification, and reiterate the arguments to that effect made in their most recent response. Nevertheless, without conceding to the Examiner’s arguments, but solely in an effort to expedite prosecution, claims 5-7 have been amended to delete reference to “full length functional derivatives” of BCRP. Accordingly, withdrawal of this rejection is respectfully requested.

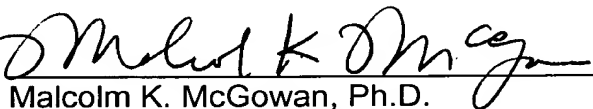
13. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited.

In the event that there are any questions concerning this paper, or the application in general, the Examiner is respectfully urged to telephone Applicants' undersigned representative so that prosecution of the application may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: December 9, 2004

By: 
Malcolm K. McGowan, Ph.D.
Registration No. 39,300

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620